IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.864 of 2001

R.Veeramani ..Appellant/Complainant

vs.

K.Natarajan ..Respondent/accused

Prayer: This Appeal has been preferred against the judgment dated 23.07.2001 made in C.C.No.650 of 2000 on the file of the Judicial Magistrate No.I, Erode.

For Appellant : Mr.N.Manoharan
For Respondent : Mr.M.Ajmal Khan

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.650 of 2000 on the file of the Judicial Magistrate No.I,Erode. The complainant is the appellant herein, who had filed the private complaint under Section 200 of Cr.P.C., against the accused for an offence under Section 138 of the Negotiable Instruments Act alleging that the accused had drawn a cheque for Rs.3 lakhs in favour of the complainant on 15.12.1999 in order to discharge a hand loan borrowed by the accused from the complainant for the purpose of meeting his business expenses and when the cheque was deposited in the bank on 23.3.2000 the same was returned with an endorsement 'referred to drawer'. A statutory notice was sent by the complainant to the accused on 6.4.2000. After the receipt of notice, the accused had sent a reply dated 20.4.2000 with frivolous contentions. Hence, the complaint.

2.After recording the sworn statement, the learned Judicial Magistrate has taken the case on file and issued summons to the accsued and on his appearance copies under Section 207 of Cr.P.C., were furnished to the accused. When the offence was explained to the accused and questioned the accused pleaded not guilty. On the side of the complainant P.W.1 was examined and Ex.P.1 to Ex.P.10 were marked.

3.P.W.1 is the complainant. He would depose what he had narrated in the complaint. Ex.P.1 is the impugned cheque dated 15.12.1999 along with the cheque Ex.P.2 & Ex.P.3 were sent by the bank while it was dishonoured on presentation. As per section 138(b) of the Negotiable Instruments Act

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a statutory notice was sent by the complainant under the original of Ex.P.4, which was received by the accused under Ex.P.6. Ex.P.5 is the postal receipt. Ex.P.7 is the reply notice dated 20.4.2000. The complainant has also produced copy of the statement of account relating to the accused account under Ex.P.8. Ex.P.9 is the letter written by the accused to the bank. Ex.P.10 is the cheque return register maintained in the bank, in which the accused is having his account.

4.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., he would deny his complicity with the crime. He has examined D.W.1 & D.W.2 and exhibited Ex.D.1 to Ex.D.12. After going through the evidence both oral and documentary, the learned trial Judge has dismissed the complaint, which necessitated the complainant to approach this Court by way of this appeal.

5.Now the point for determination in this appeal is whether the judgment of the trial Court is leading to miscarriage of justice or perverse in nature to warrant any interference from this Court?

6.The Point:- 6(a)The learned trial Judge has dismissed the complaint on the ground that one Muthusamy was not examined to show that the cheque was drawn by the accused only in favour of the complainant and that the complainant has failed to prove that he was in affluent circumstance to lend Rs.3 lakhs to the accused by way of producing his income tax returns. I am of the view that the reasoning assigned by the learned trial judge for dismissing the complaint preferred by the complainant is extraneous to the facts of the present case. Even though the signature in the impugned cheque-Ex.P.1 is admitted by the accused, the defence taken by the accused is that it was given in favour of one Muthusamy, who is a relative of the complainant as a security in the business transaction between the accused and the said Muthusamy. If such a defence is taken then as a rebuttal evidence as contemplated under Section 139 of the Negotiable Instruments Act the accused ought to have examined the said Muthusamy to show that only as a security the impugned cheque was handed over without filling the date and other particulars in the cheque. Carried away by the documentary evidence under Ex.D.1 to Ex.D.12 particularly Ex.D.8 to Ex.D.12 receipts issued by the said Muthusamy, the learned trial Judge has come to an erroneous conclusion that the impugned cheque which was handed over to Muthusamy was forged by the complainant for the purpose of this case, forgetting for a moment the provision contemplated under Section 118 & 139 of the Negotiable Instruments Act. It is pertinent to be noted in this case that the date in Ex.P.1, the amount and the signature in the impugned cheque are all written in the same ink and there is no difference seen in the writing of the date and the cheque amount and the admitted signature of the accused. It is not the case of the accused that Ex.P.1 has been forged by the complainant. Before the trial Court the accused has not taken any steps to get an expert opinion to prove that the Ex.P.1 has been forged by the complainant. Under section 139 of the Negotiable Instruments Act it is to be presumed that unless the contrary is proved, the holder of a cheque received the cheque, of the nature referred to in

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section 138, for the discharge, in whole or in part, of any debt or other liability. P.W.1, the complainant, has disposed before the trial Court that the accused is also closely related to him and that he (P.W.1) is practicing as an advocate and he his also doing agriculture, there by earning sufficient income and that the accused, who is owner of Priyadarshini Hosiery Mills, had borrowed Rs.3 lakhs on 15.6.1999 and had drawn a cheque for Rs.3 lakhs on 13.12.1999 in favour of the complainant in order to discharge the said loan. Only at the request of the accused he had deposited the said impugned cheque Ex.P.1 with the Catholic Syriyan Bank, Bhavani Branch, for collection but the said cheque was dishonoured by the bank on the ground that there is sufficient amount in the account of the accused. Informing about the dishonour of the cheque the complainant has issued notice under the original of Ex.P.4. Ex.P.7 is the reply notice sent sent by the accused. According to the accused in the reply notice, the impugned cheque was issued to third party in the year 1997 and that the complainant has no means to pay Rs.3 lakhs and that the cheque was drawn in the year 1997 itself and now the claim made by the complainant after three years from the date of drawal of the cheque is not maintainable. He would further contend in the reply notice that the complainant is not the drawee. But a perusal of Ex.P.1-impugned cheque will go to show that the cheque was drawn on 15.12.1999 and not in the year 1997 as contended by the accused in the reply notice. It has been drawn in the name of the complainant and not in the name of and other person, so to say in the name of any relative of the accused. Even though there was evidence let in by the accused, a vain attempt was made to the effect that the impugned cheque was given as a security to one Muthusamy. Absolutely there is no allegation in the reply notice Ex.P.7 that the said cheque was handed over to one Muthusamy as a security for the business transaction between the accused and the said Muthusamy. So I am of the view that the findings of the learned trial Judge is perverse in nature warrants interference from this Court.

6(b)The learned counsel for the respondent/accused relying on 1998 Crl.L.J.906 (A.Bhoosanrao Vs. Purushothamdas Pantani and another), would contend that it is the duty of the complainant to prove that he is in affluent circumstance to lend money as shown in the impugned cheque. It is in evidence that P.W.1, the complainant, is an Advocate and he is doing agriculture and was earning sufficient income. The non-filing of the income tax return will not derive us to take an adverse inference against the complainant to the effect that he had no income to lend Rs.3 lakhs to the accused. The presumption under Section 118 & 139 of the Negotiable Instruments Act on the impugned cheque Ex.P.1 is only in favour of the complainant since there is no rebuttal evidecne to the satisfaction of the Court has been let in by the accused. So the principle laid in 1998 Crl.L.J.906 (A.Bhoosanrao Vs. Purushothamdas Pantani and another) will not have any barring to the present facts of the case.

6(c) When coming to the question of sentence the principle laid down in 2004(2) SCC 235 (Goa Plast (P) Ltd. Vs. Chico Ursula D'Souza), is note worthy to be followed. The relevant observation of the Honourable

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Apex Court in the said ratio is extracted below for the purpose of deciding this appeal:-

> "We have no doubt that the respondent has committed an offence punishable under the provisions of Section 138 of the NI Act and is liable to be punished. The transaction in question took place between the parties in the year 1993, therefore, Section 138, as it stood at the relevant time, would be applicable to the present case. Section 138 provides imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both. Section 138 has now been amended and the penalty of imprisonment for a term which may extend to one year has been substituted by two years as provided by the amending Act of 2002 and the fine which may extend to twice the amount of the cheque. This has been prescribed as the punishment for the offence under Section 138 of the Act.
>
> The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil Court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."
>
> After observing as above the Honourable Apex Court after giving a months time to the accused to pay a sum of Rs.80,000/- (twice the cheque amount), with default sentence, has disposed of the appeal.

I am of the opinion that the same yardstick can be followed in this appeal also. Point is answered accordingly.

7. In fine, the appeal is allowed and the judgment in C.C.No.650 of 2000 on the file of the Judicial Magistrate No.I, Erode, is set aside and the accused/respondent herein is convicted under Section 138 of the Negotiable Instruments Act and two month's time is granted from this date to the accused/respondent herein to pay a sum of Rs.6,00,000/- (Rupees Six Lakhs) only (twice the cheque amount) to the complainant/appellant herein,

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in default thereof, the respondent herein shall suffer Simple Imprisonment for one year. The appeal is disposed of with the above observation.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,
1.The Judicial Magistrate No.I,
Erode.

2.-do- Thro. The Chief Judicial Magistrate,
Erode.

+ 1 cc to Mr.N.Manokaran Advocate SR.NO.46925
+ 1 cc to Mr.M.Ajmal khan Advocate SR.NO.47077

VRK (CO)
RD 6.8.07

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